IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor:	Christopher C. Andrews	Atty.Dkt.No.: 5957-02200
Serial Number: 09/374,408		Examiner: Phan, Joseph T.
Filing Date: August 13, 1999		Group/Art Unit: 2614
Title: Method of and Apparatus for Interactive Automated Production and Recording of an Audio File and Providing Automated Addressable Access to and Transmission and Playback of Recorded Audio Files		Conf. No.: 3712

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

REMARKS

The question presented in this pre-appeal request for review is whether, as the Examiner states, a "webpage" in the Codignotto reference teaches the "image file" recited in independent claim 75. As explained below, Codignotto refers to a webpage multiple times as including HTML. *See* Codginotto col. 3, line 6 (referring to "webpages" as "HTML-type files"); col. 22, lines 58-59 ("Webpages typically contain hypertext Markup Language (HTML) code...."). Because a "webpage" is not an "image file," Codignotto does not anticipate claim 75 as asserted by the Examiner.

For brevity, arguments are presented only with respect to independent claim 75. All of the pending claims are believed patentably distinct over Codignotto for at least the reasons set forth for claim 75. Applicant reserves the right to argue additional claims if and when the case proceeds to Appeal.

Argument

The Examiner continues to reject the pending independent claims under 35 U.S.C. § 102(e) based on Codignotto, U.S. Patent No. 7,032,030.

Claim 75 recites as follows:

75. A method, comprising:
receiving an audio signal;
recording said received audio signal to create an audio file;
storing said recorded audio file at a location accessible via a network;
associating the recorded audio file with an image file in a manner that makes the recorded audio file available for playback to a given user when the given user subsequently selects the image file via input received over the network;
receiving, from a first user, information indicating selection of said image file; and
responsive to the selection, automatically providing said associated stored audio file to the first user.

By citation to col. 23 of Codignotto, *see* Final Office Action of July 1, 2008, at pp. 2-3 (rejection of claim 75), the Examiner has attempted to equate a "webpage" in Codignotto with the "image file" recited in claim 75. In that passage, Codignotto discloses:

> Typically, a potential reviewer of the message will use a web browser type software program or device to view the webpages containing the published message. Webpages typically contain a number of references within it. References are typically an "inline" type or "link" type. Inline references are typically used to display the actual image or other data within the webpage itself when the webpage is displayed to the reviewer. For example, if an inline reference is made to an audio file, the audio file will automatically start playing to the reviewer of the webpage when the webpage is displayed. The reviewer does not have to select the link to start playback.

See Codignotto, col. 23, lines 1-12. This passage thus teaches that "webpages" may include an "inline reference" or a "link" to "data" such as an "image" or "audio file." As one example, this passage discloses that "if an inline reference is made to an audio file, the audio file will automatically start playing to the reviewer of the webpage when the webpage is displayed."

> Claim 75, on the other hand, recites in part:

> associating the recorded **audio file** with an **image file** in a manner that makes the recorded audio file available for playback to a given user when the given user subsequently selects the **image file** via input received over the network.

Claim 75 thus refers to "associating" an "audio file with an image file." While the passage of Codignotto cited by the Examiner refers to an "audio file," the passage does not teach or suggest "associating" this audio file with an "image file."

As noted in the introductory paragraph, Codignotto reinforces the common understanding of "webpages" as files that include HTML. Applicant submits that it is not reasonable to interpret the phrase "image file" in the claims as encompassing a "webpage." Terms in a claim are to be given their broadest reasonable construction **that is consistent with the corresponding specification as it would be interpreted by one of ordinary skill in the art**. *See* MPEP § 2111. The term "image file" would be understood by those skilled in the art to refer to files corresponding to, e.g., photographs. *See, e.g.,* ¶ [0020] of U.S. Publ. No. 2002/0067805 (Applicant's published specification); dependent claim 148. Thus the "image file" of Applicant's claims might be, for example, a .jpg file. This meaning of "image file" is consistent with the use of the term "image" in Applicant's specification. *See id.* at [0002] ("The internet is primarily a visually based system, allowing a user to graphically interact with an image or series of images on a display screen."); [0028] ("A conventional mouse 70 is coupled to the keyboard

68 or computer system 20, directly, for manipulating graphic images on the display 66 as a cursor control device in a conventional manner. The display 66 displays video and graphical images generated by the computer system 20. The audio playback speakers 72 and 74 allow playback of audio information from the computer system 20."). While a webpage may include or reference an "image file," inclusion of, for example, an "audio file" in a "webpage" does not constitute "associating" an "audio file with an image file" as recited in claim 75 ("associating the recorded audio file with an image file *in a manner that makes the recorded audio file available for playback to a given user when the given user subsequently selects the image file via input received over the network*").

Applicant submits that Codignotto itself distinguishes between a web page and an image file. This distinction is made, for example, in the very passage cited by the Examiner, which refers to "webpages" and "references" within the webpage, where the references may be to an "image" or an "audio file." *See* Codignotto, col. 23, lines 3-4. Another passage from Codignotto is similarly instructive:

> The system may not need to create a **webpage** each time a message is published. For example, a webpage may be created once that includes a reference to the **image filename of "1.GIF"**. Then, when each time a new single-page fax message is received, the system could simply convent the fax page into **a standard GIF image with the filename "1.GIF" and store the image file into the users storage location that is addressable by the already existing webpage**, thus replacing/updating the previous fax page. When a reviewer requests the **webpage**, the **webpages's reference to "1.GIF"** will cause it to be displayed to the reviewer. As you can see, the system may only need to update the **image file "1.GIF"** to publish a replacement fax message. Using this method, a user could maintain (update/edit) the static portions of their **webpages** independently from the system.

Codignotto, col. 24, line 62-col. 25, line 9 (emphasis added). Accordingly, Codignotto makes clear the common sense difference between a "web page" and an "image file."

Given this deficiency, Applicant submits that Codignotto does not teach each and every limitation of claim 75. For at least this reason, Applicant respectfully requests removal of the § 102 rejection of this claim. Applicant submits that the remaining independent claims are not anticipated by Codignotto for at least reasons similar to those provided in support of claim 75.

Advisory Action

In the Advisory Action of November 12, 2008, the Examiner continued to allege that "Codignotto's webpage is an image file that hosts an audio file" and further cites "col. 23 line 66-col. 24," stating that "Codignotto discloses at least two embodiments that associate[] a recorded audio file with an image file." *See* Advisory Action. Applicant disagrees that the portions of Codignotto referred to by the Examiner disclose these alleged features, as they merely appear to describe an embodiment in which an image of a received fax "could be processed by Optical Character Recognition (OCR) to convert the text contain[ed] within an image into computer readable ASCII data" and an embodiment in which "a voice message could be processed by speech recognition (SR) software to convert the voice message into ASCII text." *See* Codignotto, col. 23, line 62 – col. 24, line 1. The fact that the "resulting ASCII text" could be placed in a webpage, *id.* at col. 24, lines 1-3, does not buttress the Examiner's position, particularly in view of the explicit distinction Codignotto makes between an "webpage" and an "image file."

CONCLUSION

The Commissioner is authorized to charge any fees that may be required, or credit any overpayment, to Meyertons, Hood, Kivlin, Kowert & Goetzel, P.C. Deposit Account No. 501505/5957-02200/DMM.

<div align="center">Respectfully submitted,</div>

Date: December 12, 2008   By: /Dean M. Munyon/
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